

**STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
LABOR RELATIONS DIVISION**

In the Matter of:

CITY OF FLINT,  
Respondent-Public Employer in Case Nos. C00 D-56,  
C00 D-58, and C00 D-64,

-and-

68<sup>th</sup> DISTRICT COURT,  
Respondent-Public Employer in Case No. C00 D-60,

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND  
MUNICIPAL EMPLOYEES, COUNCIL 25, AND LOCALS 1600 and 1799,  
Charging Party in Case Nos. D-58 and C00 D-60,

-and-

FLINT POLICE OFFICERS ASSOCIATION,  
Charging Party in Case No. C00 D-56,

-and-

FLINT PROFESSIONAL FIRE FIGHTERS  
UNION, LOCAL 352, IAFF,  
Charging Party in Case No. C00 D-64.

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APPEARANCES:

Keller Thoma, P.C., by Frederic E. Champnella, Esq., for the Public Employers

Martens, Ice, Geary, Klass, Legghio, Israel & Gorchow, P.C., by Michael J. Bommarito, Esq., for  
Charging Party AFSCME and Its Locals

Gregory, Moore, Jeakle, Heinen, Ellison & Brooks, P.C., by James M. Moore, Esq., for Charging  
Party Flint Police Officers Association

Sachs Waldman, P.C., by George M. Kruszewski, Esq., for Charging Party Flint Fire Fighters  
Union, Local 352, IAFF

## **ORDER ON REMAND**

This matter is before the Commission on remand from the Michigan Court of Appeals. The Commission issued a Decision and Order on October 10, 2002, finding that Respondents City of Flint and 68<sup>th</sup> District Court did not violate Section 10(1)(a) and (e) of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.10(1)(a) and (e), and dismissing the unfair labor practice charges.<sup>1</sup> The charges asserted that Respondents have refused to bargain in good faith and instituted a mid-term contract modification that amounted to a unilateral change in terms and conditions of employment in violation of PERA. Specifically, the Charging Parties allege that the City amended its retirement ordinance to limit to twenty-six the number of pays used to calculate final average compensation (FAC) for the purpose of computing pension benefits. Retiring employees are permitted to pick the beginning and ending dates of the years used to calculate FAC. For a period of about ten years prior to the amendment, some employees did so in a way that included twenty-seven pays.

In a June 17, 2004 unpublished decision, the Michigan Court of Appeals affirmed in part, and reversed in part our Decision and Order, holding that Respondents committed an unfair labor practice in violation of MCL 423.210(1)(e) by unilaterally amending the retirement ordinance. The Court remanded this matter to us to effectuate its decision. The Court of Appeals decision is attached hereto and incorporated by this reference.

In accordance with the Michigan Court of Appeal's decision, we issue the following Order:

### **ORDER**

Respondents City of Flint and 68<sup>th</sup> District Court, their officers and agents, are hereby ordered to:

1. Cease and desist from unilaterally changing the number of pay dates used to compute final average compensation for the calculation of employee pension benefits for those employees represented by the American Federation of State, County and Municipal Employees, Council 25, Locals 1600 and 1799; the Flint Professional Fire Fighters Union, Local 352, IAFF; and the Flint Police Officers Association.
2. Take the following affirmative action to effectuate the policies of PERA:
  - a. Recalculate final average compensation, by using twenty-seven pay dates for one of the three best years, for each of the employees represented by the American Federation of State, County and Municipal Employees, Council 25, Locals 1600 and 1799 or the Flint Professional Fire Fighters Union, Local 352, IAFF who meet the following criteria:

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<sup>1</sup> Our Decision and Order adopted the February 28, 2002 Decision and Recommended Order of then Administrative Law Judge (ALJ) Nora Lynch. Former ALJ Lynch is now the Commission Chairman and has, therefore, recused herself from further participation in this case.

- i. The employee retired on or after January 20, 2000, but before the expiration of their respective collective bargaining agreements that were in effect on January 20, 2000, the date the retirement ordinance was enacted; and
  - ii. The employee had all three best years of their final average compensation calculated using only twenty-six pay dates;
- b. Recalculate final average compensation, by using twenty-seven pay dates for one of the three best years, for each of the employees represented by the Flint Police Officers Association who meet the following criteria:
  - i. The employee retired on or after January 20, 2000, but on or before June 30, 2002; and
  - ii. The employee had all three best years of their final average compensation calculated using only twenty-six pay dates.
- c. Post the attached notice in all areas where employee notices are normally posted for thirty days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Harry W. Bishop, Commission Member

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Nino E. Green, Commission Member

Dated: \_\_\_\_\_

**NOTICE TO EMPLOYEES**

PURSUANT TO AN ORDER OF THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION ON REMAND FROM THE MICHIGAN COURT OF APPEALS WHICH FOUND THAT THE CITY OF FLINT AND THE 68<sup>TH</sup> DISTRICT COURT COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF THE MICHIGAN PUBLIC EMPLOYMENT RELATIONS ACT, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT unilaterally change the number of pay dates used to compute final average compensation for the calculation of employee pension benefits for those employees represented by the American Federation of State, County and Municipal Employees, Council 25, Locals 1600 and 1799; the Flint Professional Fire Fighters Union, Local 352, IAFF; and the Flint Police Officers Association.

WE WILL recalculate final average compensation, by using twenty-seven pay dates for one of the three best years, for employees represented by the American Federation of State, County and Municipal Employees, Council 25, Locals 1600 and 1799 or the Flint Professional Fire Fighters Union, Local 352, IAFF who meet the following criteria:

- 1. The employee retired on or after January 20, 2000, but before the expiration of their respective collective bargaining agreements that were in effect on January 20, 2000, the date the retirement ordinance was enacted; and
- 2. The employee had all three best years of their final average compensation calculated using only twenty-six pay dates.

WE WILL recalculate final average compensation, by using twenty-seven pay dates for one of the three best years, for employees represented by the Flint Police Officers Association who meet the following criteria:

- 1. The employee retired on or after January 20, 2000, but on or before June 30, 2002; and
- 2. The employee had all three best years of their final average compensation calculated using only twenty-six pay dates.

CITY OF FLINT

68<sup>th</sup> DISTRICT COURT

By \_\_\_\_\_

By \_\_\_\_\_

Dated: \_\_\_\_\_

(This notice shall remain posted for a period of thirty consecutive days and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Michigan Employment Relations Commission, Cadillac Place, 3026 W. Grand Blvd., Suite 2-750, P.O. Box 02988, Detroit, MI 48202-2988, (313) 456-3510.)